

COMMENTARY

LIBERTARIAN PRECEPTS AND SUBVERSIVE REALITIES

Some Lessons Learned in the School of Experience

ALAN F. WESTIN

"[Consider] the futility of a moral aspiration that cannot make its account with brute fact."—GEORGE SABINE, commenting on More's *Utopia*.

A NEW feeling of confidence about civil liberties is in the air, an invigorating sense that we are emerging from a dark alley and can see the familiar, well-lighted streets just ahead. Sev-

Now that McCarthy seems to be on the run, it is more necessary than ever that "civil libertarians" evaluate the wisdom of their course to date. For it seems clear, contends ALAN F. WESTIN, that the strategy of the defenders of civil liberties has not been notably successful, and has indeed often boomeranged, giving aid and comfort to "McCarthyism." Mr. Westin, as readers of COMMENTARY have reason to know, has made himself an outstanding expert on the state of civil liberties in the struggle against Communist subversion. His three previous articles on that subject in these pages over the past two years ("Our Freedom—and the Rights of Communists," July 1952; "Do Silent Witnesses Defend Civil Liberties?" June 1953; "Winning the Fight Against McCarthy," July 1954) are still being discussed and quoted. The present article was delivered, in somewhat different form, as a paper before the panel on Individual Freedom and National Security at the American Political Science Association convention in September 1954. A graduate of the University of Florida, Mr. Westin is now a member of the department of government at Harvard.

eral related developments have brought this about.

There was the Senate's condemnation of McCarthy, by which the accredited spokesmen for American conservatism, after far too long a silence, re-pledged their allegiance to Constitutional morality. There were the 1954 Congressional elections, in which the victories of Senators Clifford Case, James Murray, and Joseph O'Mahoney, and the defeat of Representative Kit Clardy, seemed to indicate that the injection of a "Red issue" can no longer send the electorate into a frightened stampede. At the community level, concern has spread that our civil freedoms may have been manhandled these past years; this concern is typified by the League of Women Voters' sponsorship of Freedom Agenda, a project for the discussion of civil liberties in thousands of local communities across the nation. Finally, with the relaxation of international tension and the need to reshape our foreign policy for the long-haul, there has also come a feeling that at home, too, we might reconsider the crash-program concept of internal security and consider a longer-haul analysis.

Already this psychology has been reflected at the government level. President Eisenhower has announced that the Federal security risk program is under review, and that he is considering the appointment of a

national commission on internal security. Congress is scheduled to debate a code of fair procedure for investigating committees. While these hopeful signs do not mean that we have seen an end to outrages committed in the name of security, it does seem to mean that the nation now, at least, seeks the voice of reason and moderation.

At this promising moment, it would be well to pause and look back over the events of recent years to see how those most ardent in defense of our civil liberties rose to the challenge of Communist activity as such. To many staunch and decent civil libertarians, this will seem a peculiar and needless thing to do just now. To them, the recent turn of events seems proof that they were right all along—right about Martin Dies and Joe McCarthy, right about loyalty programs and the Fifth Amendment controversy. This may be so, but there still remain a number of provocative questions raised by the internal security drama of recent years. Have the “defeats” of civil liberties been simply the results of national hysteria as exploited by cynical Know-Nothing elements? Have the modifications of our “traditional” pattern of civil liberties been departures from basic principle that should be undone as soon as the political climate permits? How do their present positions compare with the theories which libertarians offered the nation in 1945 or 1947, and in what direction is libertarian doctrine moving now? A searching exploration of these questions, far from being an unnecessary exercise, may be the most important thing for libertarians to do, or have done, right now if they want to implement the “new awareness” and prevent a revival of McCarthyite strength. For that purpose, and in that spirit, the following critique of classic libertarian theory has been written.

THE civil liberties tradition in the United States has not been wedded to any political party, or any social class, or even to particular positions taken by the American Civil Liberties Union—whose official suggestions usually reflect the factual conceptions

and emotional impulses which underlie the reactions of most of us to “civil liberties issues.” Though virtually every ideological faction in our country can be found at some time or other relying on the Constitutional guarantees we call civil liberties, there is nevertheless a group I would term the “libertarians” that adopts civil liberties as its special concern. While members of this group may disagree over issues of economics or foreign policy, they have a common conception of Constitutional rights that is a blend of the Enlightenment faith of a Jefferson and the skeptical relativism of a Holmes.

In 1945, the libertarians by and large had a firm, agreed-upon “credo” for defense of our open society. They hoped for progress through the competition of ideas, believed that government should make no law abridging the rights of free speech, press, or association, and demanded fair procedures in every forum as essential to ordered liberty. They understood what they were opposed to—punishment of thoughts rather than deeds, test oaths, investigations of “loyalty,” blacklists for “un-American” activities, etc., etc. Libertarians were *active*, too, in defending and advancing this position. For they had marked well Thomas Paine’s warning that “those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it.”

Despite the apparent soundness of their principles, the luster of their letterheads, and the energy of their supporters, the years since 1945 have marked one defeat after another for the libertarians in the struggle over internal security measures. The first issue, which sharpened between 1945 and 1947, had to do with the nature of the threat that the Communist party posed to American society. Civil liberties theory maintained that domestic Communists belonged to the left fringe of American social protest, and to a radical political party that, though objectionable, was no worse than, if as bad as, the Silver Shirts or Bundists. The correct way to deal with Communists, the argument ran, was to expose their errors of theory and their

shady practices, while solidifying our own theory and practice of democracy. This argument was washed away in the flood of facts that came to light after 1945, as evidence from the Canadian Royal Commission, the FBI, and Congressional committees revealed the existence in the United States of a well-organized "conspiratorial center" manipulated from the Soviet Union and engaged in espionage, the fomenting of political strikes in defense plants, and the infiltration of sensitive positions in American public and private life.

Thus the libertarian side was defeated in its characterization of the American Communist party and its effort to define the "political rights" of Communists in keeping with that characterization. The second round of the great debate over security opened after 1947. This involved the question of whether Communist infiltration of government was peripheral or serious and, especially, how extensive it had been under the New Deal. With a sigh of relief, harried spokesmen for civil liberties turned away from their qualified defenses of clouded figures like Carl Marzani and Harold Christoffel, to close ranks behind Alger Hiss, almost the personification of the talented government official under New Deal liberalism. Here was a man of breeding and character being attacked by a self-confessed spy and former Communist who spoke from the rostrum of the nation's "Star Chamber." Certainly the Hiss case would turn the tide, and decency be reasserted. But after the facts of the Harold Ware cell in Washington had been bared, after the Bentley-Chambers-Weyl testimony had gone unrefuted, and after two successive trials had shaken even Hiss's last supporters, a second line of defense was abandoned in stunned disorder.

Professor Owen Lattimore provided a third rallying point. Here was a man outside government service under criticism for his "pro-Communism" and his "influence" over American foreign policy. He was not a member of the Communist party, nor had he passed government secrets; internal security surely did not require the infringement of academic freedom and of the right to ex-

press bold opinions, however wrong or right. But the hearings on the Institute of Pacific Relations held by the McCarran Internal Security Subcommittee showed how Communists and fellow-travelers had succeeded to a large extent in manipulating an organization whose membership included high government, press, and university figures—an organization, moreover, that had exerted a powerful influence on our Far Eastern policy. After these disclosures, the slogan of "ordeal by slander" fell on unsympathetic ears in the nation.

WHAT these defeats suggested was *not* that every Communist had committed espionage, or that the New Deal had had many people like Hiss behind it, or that Owen Lattimore was a Yenan agent. Nor did it mean that the wild charges and inferences made by the McCarthyites became any the truer, or their conduct became any less immoral. What was shown, it seems to me, was that libertarians could be found, again and again, relying on the *wrong history* or the *wrong facts* to defend as *praiseworthy*, or at least *innocuous*, men and movements that proved after public debate to be indefensible *on those grounds*. True, important questions of civil liberties had been raised. The House Committee on Un-American Activities and the McCarran judiciary subcommittee had often used procedures repugnant to our basic notions of fairness, just as the indictment of Professor Lattimore for perjury in denying before the McCarran subcommittee that he was a "pro-Communist" was a shocking and indefensible action. But these offenses did not touch the prime reality at issue in these controversies: security and subversion; and it was here that libertarians found, too late, that their case was faulty. . . .

Rather than rest so serious a criticism of the libertarian side on such an impressionistic account as this alone, we might consider three instances of the libertarian response to the security problem: the positions taken on loyalty programs, guilt by association, and the self-incrimination controversy.

Classic libertarian theory was invoked to

oppose the creation of a Federal loyalty program in 1947, and to criticize its continuation since that time. Convinced that the threat of disloyalty was overstated and part of a "drive for conformity" by the Dies-Rankin forces, many libertarians argued that government investigation was justified only in regard to unlawful conduct, not in regard to the "political and social beliefs" held by millions of government employees. The danger of espionage, these libertarians stated, could be met by counter-espionage; FBI surveillance under existing laws or executive orders (such as those against treason, the disclosure of government secrets, etc., etc.) was declared to be adequate protection for the government. That this would entail risks, the libertarian freely admitted, but he felt that such risks were of the kind that a free society should be willing to run in order to avoid the excesses of a James I or the diabolism of a Dr. Goebbels. With varying degrees of emphasis, this line of argument was advanced by Alan Barth, the Public Affairs Round Table on Loyalty, Carey McWilliams, and others.

It seems to me that this argument sidestepped the really difficult question: is a loyalty program, despite its risks, necessary in the first place to protect our governmental process from Communist infiltration? The libertarian found it easy to parody the speeches of a John Rankin or to quote the "I hold in my hand. . . ." proclamations of a McCarthy, but only by averting serious attention from such facts as the delivery of government secrets to Soviet agents by the Harry Golds, Judith Coplons, and Elizabeth Bentleys; the organized infiltration of government service by units like the Harold Ware group; and the general pattern of Communist-sympathizer activity in the civil services of Canada, the United States, Great Britain, and other countries. While some of the items in this pattern are open to disagreement, one does not really dispose of it by citing the charges made by businessmen in 1896 against the loyalty of the Populists, or by urging that we redouble our efforts to eliminate Negro segregation.

NOR does the libertarian argument that the existing laws were adequate for the control of subversion seem entirely convincing. The problem raised by the operations of Communists in government is not covered by acts forbidding the advocacy of overthrow of the government, or by legislation punishing acts of disloyalty after they have been committed. The critical question is how to screen government employees in order to detect as many disloyal persons as possible before they can commit security violations—and to do this without setting up a process that works against the unorthodox or the dissenter. A system of screening government employees is required that must be based upon data on the operations of Communist groups and on the kinds of non-Communists they have been successful in misleading or blackmailing into Communist service.

The suggestion that the FBI keep surveillance over Federal personnel under existing laws seems equally futile, for it evades the problem of establishing criteria of loyalty in the first place, and of providing non-FBI agents to evaluate the FBI's raw data, and of establishing a hearing procedure to make the subsequent verdicts as fair as possible. Of course, a system that deals in such slippery entities as "loyalty" and "potentiality," and measures them in administrative hearings, is not part of Jefferson's America and will present a host of knotty problems. But how responsible is the conclusion, as one critic put it, that loyalty programs are fundamentally wrong because "no one has suggested a way of conducting an inquiry without at least some undesirable features"?*

Consider, for example, what would have happened if the Truman Loyalty Order had not been proclaimed and "existing measures" had been left as our sole safeguards after 1948. In view of the Soviet Union's stepped-up aggressiveness and its intensified espionage and infiltration efforts, the probable re-

*For a discussion of the failings of the loyalty program and needed reforms, see this same writer's *The Constitution and Loyalty Programs*, The Carrie Chapman Catt Foundation, New York, 1954.

sult would have been the stretching of such legislative decrees as the Foreign Agent Registration Law of 1940; wholesale dismissals of suspected employees under the cover of "suitability" rules like those in the Lloyd-LaFollette Act of 1911; and the transfer to the FBI of evaluative and policy functions. Such measures would not only have been haphazard in dealing with the loyalty problem, but would also have offered a greater threat to civil liberties and government job security than the loyalty program at its worst—which worst includes the headlong incompetence of a Scott McLeod. Actually, what would have been more likely had the Executive taken no action on loyalty was legislation by an angry Congress that would have set up less sensible loyalty regulations and taken the controls out of Executive hands, where they belong.

It is to be doubted whether any government in a society based upon majority rule, and faced with the task of uniting its people against external danger, could have ignored the country-wide concern over Communists in government—a concern known by the administration to be justified by actual cases. The concept of security, after all, has two aspects: it covers both the fact of danger and the public's apprehension of danger. This is not to suggest for a moment that innocent persons should be branded disloyal to soothe public opinion; but that in coping with real Communists and a real loyalty problem, the public mood is not irrelevant to security analysis, and cannot be waved away with a reference to the mood at Salem. To restore public confidence in government, a comprehensive system had to be framed, and it had to be framed quickly. Had this not been done, either an impatient Congress would have stepped into the vacuum of responsibility, or demagogues aware of the public's dissatisfaction with counsels of inaction would have had a plausible invitation to challenge Constitutional processes as a whole.

In urging that no loyalty program was, or is, necessary, libertarians will be seen to resemble their Manchester forebears, who op-

posed the English Poor Laws at the beginning of the 19th century by stating, "Unhappily, no knowledge is so rare as the knowledge when to do nothing. It requires an acquaintance with general principles, a confidence in their truth, and a patience in the gradual process by which obstacles are steadily but slowly surmounted." History suggests that if libertarians approach the loyalty problem during a cold war in the same way that James Mill approached factory legislation, and Herbert Hoover depression, their efforts will be just as ineffectual because their response to the felt needs of society will have been just as inadequate.

A SECOND example of the libertarian response revolves around the self-incrimination clause in the Fifth Amendment. It is a classic libertarian principle that anyone accused of a crime is presumed innocent until proved guilty; this means that when the question of guilt or innocence hangs in exact balance the addition of this presumption drops the scale in the direction of innocence. When applied to the case of a person charged with Communist or subversive activities who has been called before a Congressional committee and has invoked the Fifth Amendment, libertarians apply the presumption of innocence as follows:

"Y has been called before a Congressional committee. He was asked whether he now is or ever was a member of the Communist party. He refuses to answer that question on the ground that his answer might tend to incriminate him. Since Y should be presumed innocent until proved guilty, and since the privilege against self-incrimination is a Constitutional right, no guilt should be inferred from his claim of the Fifth Amendment, just as no guilt should be inferred from a defendant's refusal to testify in a trial involving murder or bank-robbery."*

If one examines this argument closely, it seems to me that it will be found wanting, not because its underlying principles are wrong, but because they are applied mechan-

*See, for example, Franz and Redlich: "Does Silence Mean Guilt?" *the Nation*, June 6, 1953.

ically to the specific problem, and the essential *intermediate* questions are ignored. The notion that since *guilt* has not been *properly proved* against Y, one should not draw any *inference that he is guilty*, fails to ask, much less consider, these important questions:

- For what purpose is the inference (even “no inference possible”) required in Y’s case? To weigh Y’s loyalty as a government servant? To decide upon the Communist or non-Communist character of a union? To determine Y’s fitness as a teacher? To assess Y’s role in some movement or event? Or perhaps to evaluate Y’s ideas?
- Who is being called upon to make the inference? State government? A private employer? A political grouping such as a party? Or the community at large?
- What does an inference of “guilt” signify in this situation? That Y acted *unlawfully*? *Reprehensibly*? *Compromisingly*? *Unwisely*? Or what?
- What degree of proof does the question of Y’s guilt in this situation require? Proof by the courtroom standards for criminal conviction? Proof acceptable to a reasonable man? Proof by damaging evidence left unexplained by Y?

CLEARLY, these questions should be at the forefront of every analysis of Fifth Amendment cases. Take the first one, for example. If Y is called before a committee and accused of holding Party Card No. 475, and he is a proofreader in the Government Printing Office with access to important government documents, secret and otherwise, his silence under invocation of the self-incrimination clause should be, I submit, sufficient ground for discharging him. On the same evidence, if Y is the head of a United Electrical Workers local, I think that the government is justified—even aside from the anti-Communist provisions of the Taft-Hartley Act—in refusing Y clearance in a defense contract industry—and Y’s silence

raises in any case a serious question about the nature of his local.

If Y is a teacher in a private university, then I think it is the duty of his university’s administration to obtain a transcript of the hearings, make an examination of Y’s career, and call Y before a faculty or administrative committee where he will have full opportunity to explain in private his reason for invoking the Fifth Amendment, and to clarify his present status as regards Communist party membership. His university’s obligation to decide the question of Y’s sincerity and probity without the benefit of legal process, and with the possibility of error, is really not different from its obligation to make an inquiry when a charge is presented with plausible documentation that Y is engaged in personally immoral conduct jeopardizing his usefulness as a teacher and the good name of the institution. A charge by a Congressional committee should be treated simply as the raising of a “rebuttable” presumption, but the university administration must then fulfill its duty to students, faculty, and the community by weighing the Congressional committee’s supporting data against Y’s explanation and his record.

A case known to this writer may illustrate the point. A Congressional committee called Professor F. before it and asked him certain questions; to avoid replying to these he invoked the Fifth Amendment. When the president of his university called the Congressional committee’s chairman and asked what evidence he had to support the questions he had posed, the reply was that the evidence lay in Professor F.’s failure to reply! The president, quite rightly, refused to fire his professor. However, unless a university is willing to make its own decision as to F’s or Y’s qualification, and to defend not only its right to do so, but its reasons for its decision, nothing is more certain than the fact that the decision will soon be taken out of its hands.

Such are the complicated intermediate questions surrounding the inferences to be drawn in the cases of Fifth Amendment witnesses. Yet libertarian theory, leaping straight from A to Z, has concluded that no

inferences should be drawn by anyone. As with the problem of loyalty in government service, libertarians are found urging suspended animation—which in many cases may really amount to a judgment that Y is innocent. However, questions large in the public eye, whether they are Communist conspiracy, underworld conspiracy, or business conspiracy (to name the most spectacular areas of Congressional investigation in recent years), cannot be left suspended in mid-air. If libertarians do not provide the necessary distinctions for judgment, then the vacuum will be filled with the ready explanations of those to whom all conspiracies are black-and-white matters; and the public will be forced to choose between the extreme alternatives of Y as a "willing tool of Moscow" and Y as a "victim of the witch-hunt."

MUCH the same situation seems present where the problem is that of drawing inferences from a person's associations. It is another classic libertarian principle that, under Anglo-American jurisprudence, guilt is personal and not collective, and proof of an individual's contact with guilty persons will not usually constitute proof of *his* guilt. Applied to the current problem of "guilt by association," this principle results in this position: "X is shown to belong to, or to have belonged to, Communist or Communist-front organizations. But we cannot know how far X subscribed to the doctrine of the organization in question, or knew its real purposes, or was willing to act upon them. Furthermore, the characterization of a group as Communist or a Communist front is an uncertain matter fraught with danger of errors and likely to infringe on the freedom of other, non-Communist organizations. Because of this, no judgments about X should be inferred from his associations, but, if he *must* be judged, it should be on a personal basis alone.* So the libertarians state the principle, and its implications.

In this question, besides the problems of the purpose of an inference, the nature of

the evaluator, and the significance of guilt, we are brought face to face with the problem of "association" in its present Communist setting, which is actually a new setting.

It is true, of course, that the word "association" covers a wide variety of relationships. It can range from association in order to oppose Communism (Arthur Schlesinger, Jr. debating a Communist speaker before Harvard's John Reed Club); to accidental contact (serving in an alumni organization that has Communists in it); to unknowing membership in a Communist front (an immigrant who joins a Communist-dominated Polish American society); to active participation in front groups (which may mean participation in folk-singing); to leadership in front groups (which may be "honorary," or may be "control" leadership); to actual membership, participation, or leadership in the Communist party itself. In addition, there is the question of when such association took place—1925, 1935, 1945, or 1955? There is also the question of how long the association continued, how many parallel associations X maintained, and a host of related inquiries.

SOMEWHERE along the scale, however, it seems clear that responsibility must be incurred, and that such responsibility can involve the individual's loyalty, or his credibility, or his community respectability. Yet faced by difficulty in distinguishing between and dealing with the variety of shades of responsibility, libertarians list the injustices that inferences from association have caused, and assert that, until a Solomon comes to judgment, "innocence" is the inference *always* to be drawn. The McCarthys, of course, demand that association with Communists—in which they likewise refuse to recognize varied degrees of responsibility—should be taken *always* and invariably as proof of complete guilt. So the battle rages between white and black, with middle positions condemned as either cowardice or surrender.

One threatening possibility of this battle which is generally overlooked is that, if

*See, for example, H. S. Commager, *Freedom, Loyalty, Dissent*, Oxford University Press, 1954.

libertarians maintain their rigid conceptions in this matter of guilt by association, the McCarthy apologists may succeed in convincing the public that they, the libertarians, do not really mean their professions of rationality and moral responsibility, and are simply special pleaders. As one leading supporter of the Wisconsin Senator wrote, Senator McCarthy pays reason the supreme compliment by ascribing to the intellectual "a serious impact on society" and taking seriously man's "inseparable responsibility for the positions he takes, including wrong ones," while intellectuals, he contends, "invoke for themselves . . . a kind of license to philander through the moral order." While McCarthy's reading of error and his assignment of responsibility are hardly acceptable, an absolutist framework that forbids libertarians on principle to infer anything about a defendant, for any purpose, at any point short of courtroom proof of illegal action, leaves society without the means of making necessary judgments and distinctions in coping with the formidable problem offered by the agents, conscious and otherwise, of a hostile foreign power.

THEODORE ROOSEVELT once observed that "nine-tenths of wisdom consists of being wise in time." It seems to me that the libertarians have been late time after time in coming to grips with "brute fact" and realities insofar as they relate to problems of internal security, and that they tend to meet each new security crisis with the last status quo.

Several reasons can be offered to explain this delayed-reflex tendency. First of all, libertarians during the past few decades have been in the habit of laying civil liberties problems before the Supreme Court in the expectation that that body will strike down departures from classic principles under a "preferred place" doctrine. Compromises, if necessary, have been made in the judicial decisions, but *not* by the libertarians, who feel they have to uphold the pure doctrine if only as a counterweight to reactionary forces. This court-seeking psychology, pos-

sible when concern with security was small, turned out to be a flight from responsibility when serious situations arose that required modification of libertarian principles not unlike those that Jefferson and Lincoln had made in past emergencies. With the libertarians unwilling to make the necessary compromises themselves—and thus to deal with and take responsibility for the political process—the security-firsters took over, with *their* prescriptions. For somebody had to do something. And the public began to lose confidence in the power of the libertarian tradition to cope with a world no longer amenable to coffee-house rationalism.

Moreover, libertarians have tended to exalt procedure to a point where it often dwarfs substantive considerations. It is certainly true, as Justice Felix Frankfurter has observed, that "the history of liberty has largely been the history of observance of procedural safeguards," and libertarians deserve honor from the nation for their vigilance in guarding due process, and in defending the privilege against self-incrimination. But fair procedure, it should be recalled, though the right of every individual under our Constitution, is not a *substitute for the ascertaining of the truth*, but a means of doing so. When wire-tapping is criticized but Judith Coplon's guilt seems to go unnoticed, or when their justified anger at persecution through Congressional committee procedure blinds libertarians to the actual facts about Communist activity uncovered by these committees, then part of the task of defending and asserting the truth against falsehood is left to other hands.

LIBERTARIANS have been off balance and have been reacting instinctively rather than rationally ever since the security problem emerged. Partly, this is a question of cultural lag: libertarians shifted their aim from Martin Dies to Joe McCarthy without becoming aware of the new balance which had to be struck because of the facts disclosed by more responsible people than Dies or McCarthy. Partly, it is a question of politics: libertarians included within their ranks many

people about whom a security question of one sort or another arose. This led, naturally but not always wisely, to a posture of automatic defense. But the case of Alger Hiss showed that the "brute facts" did not always fit the automatically generous reaction.

Last but not least, many libertarians still avoid facing the revolutionary character of our age. Such persons are like those isolationists who yearn for the "simpler America" of McKinley, and want to undo the "errors" of the past fifty years—all of them made by wicked conspirators. The libertarian cites the Alien and Sedition Laws of 1798, repression in the South on the eve of the Civil War, and the Palmer raids of the 1920's as evidence that America has gone witch-hunting in the past and has had later, to our national shame, to acknowledge the false nature of the threat they were reacting to. While the libertarian usually did not discount the menace of Nazi subversion and understood the necessity for the McCormack Committee's investigation of Nazi-American activities in the 1930's, he continues to see the Communist problem in terms of "cycles" and "moments of hysteria," and in the back of his mind he assumes that it will be possible, if only the country can be made to return to our traditional principles, to restore, even with the existence of the Soviet Union and Red China, the "freer atmosphere" of the 1920's and 1930's.

Yet no swing of the pendulum can bring back the days of Thoreau, just as no *deus ex machina* can descend to conjure away Com-

munists, subversion, aggression, and the other solid realities of the cold war. Ours remains a world in which plots thicken and armies march; where men who seem to be heroes are tumbled, and distasteful fellows, and sometimes even villains, may stumble on the truth; where frictions and tensions promise to survive no matter which penetrating quotation from Oliver Wendell Holmes is produced. That this world is not of our making and not to our liking does not make it any the less real. . . .

IT SHOULD be obvious that this criticism of the civil libertarians has been directed at the application of principles and not at the principles themselves. That our freedoms to speak and write and organize remain the heart of our system, the very reason for our seeking internal security, and our best hope for survival, I believe firmly. And I also believe that the growing reaction against the cynical disregard of our civil liberties is to be encouraged by every means. What I am concerned about, however, is lest libertarians congratulate themselves for having taught *non-libertarians* the Constitutional catechism, instead of recognizing that they, as the champions of "pure" liberty in a Stalinist age, also have received a lesson in the real meaning of Constitutional liberty. As in so many other areas where democratic policy must be made, the true enemy remains, as Nehru once said, "those virgin minds which have not been soiled or violated by thought's assault."